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7 IN THE UNITED STATES DISTRICT COURT  
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9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 ALMA CARRILLO,

No. C 17-05693 WHA

12 Plaintiff,

13 v.

14 TARGET CORPORATION, a Minnesota  
15 Corporation, and DOES 1 through 50,  
16 inclusive,

Defendants.  
17 \_\_\_\_\_/

**ORDER RE PAYMENT OF  
ATTORNEY'S FEES AND  
GRANTING MOTION FOR  
LEAVE TO WITHDRAW AS  
COUNSEL**

18 **INTRODUCTION**

19 In this negligence action, plaintiff's counsel moves for leave to withdraw as counsel of  
20 record. No opposition has been filed. For the following reasons, the motion is **GRANTED**.

21 **STATEMENT**

22 In July 2017, plaintiff Alma Carrillo filed a complaint for negligence against defendant  
23 Target Corporation in Alameda County Superior Court. Defendant removed the action and  
24 plaintiff subsequently moved to voluntarily dismiss pursuant to FRCP 41(a)(2). A December  
25 2017 order granted plaintiff's motion but conditioned dismissal on plaintiff's payment of \$5,000  
26 in attorney's fees to defendant (Dkt. Nos. 1, 11, 17).

27 Due to an administrative snafu, the action was closed by courthouse staff prior to  
28 plaintiff's payment of the \$5,000 in defense attorney's fees. After defendant filed a notice  
explaining that plaintiff had not paid as set forth in the December 2017 order, a subsequent

1 order vacated the dismissal. The order also directed plaintiff to show cause why she had failed  
2 to pay defendant \$5,000 as directed (Dkt. No. 19).

3 In responding to the order to show cause, plaintiff's counsel, Albert DiRocco, explained  
4 that plaintiff had not authorized the payment of attorney's fees to defendant. Attorney DiRocco  
5 also explained that he and plaintiff had encountered irreconcilable differences with respect to  
6 the litigation. He had accordingly sought to file a motion to withdraw as counsel and personally  
7 served the motion on plaintiff, but stated that he could not file the motion because the action  
8 had been dismissed. Now that the case has been reopened, Attorney DiRocco moves to  
9 withdraw as counsel (Dkt. Nos. 20–21).

10 This order follows full briefing and oral argument. Plaintiff personally appeared at the  
11 April 5 hearing with the assistance of a Spanish-language interpreter.<sup>1</sup>

## 12 ANALYSIS

### 13 1. ORDER TO SHOW CAUSE.

14 In responding to the order to show cause, Attorney DiRocco explained that plaintiff had  
15 not authorized the payment of attorney's fees to defendant as set forth in the December 2017  
16 order. He concurrently filed a motion to withdraw as counsel in this action. In light of  
17 plaintiff's response to the order to show cause and defendant's failure to oppose the motion to  
18 withdraw as counsel, a subsequent order asked defendant to advise whether it believed further  
19 action should be taken regarding plaintiff's failure to pay attorney's fees. In response,  
20 defendant stated its view that plaintiff should be sanctioned because her non-payment amounted  
21 to a failure to comply with the December 2017 order (Dkt. Nos. 19–24).

22 Plaintiff's failure to pay attorney's fees does not warrant sanctions. The December 2017  
23 order granted plaintiff's motion to voluntarily dismiss the action *subject to* the condition that  
24 certain defense attorney's fees be reimbursed (Dkt. No. 17). Plaintiff's non-payment of  
25 attorney's fees was accordingly not in contravention of the December 2017 order. Moreover, at  
26 the hearing on Attorney DiRocco's motion to withdraw, plaintiff explained that she wanted to  
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28 <sup>1</sup> The Court thanks Attorney DiRocco for covering the cost of the interpreter's assistance at the April 5 hearing.

1 proceed to litigate her case against defendant. Because plaintiff has elected to continue with  
2 this action, her motion to dismiss is **DEEMED WITHDRAWN**. The condition that plaintiff pay  
3 defense attorney's fees is accordingly moot and plaintiff need not pay defendant \$5,000 (either  
4 now or as a lien against any favorable judgment plaintiff may obtain in this action). This order  
5 supercedes any comments made by the undersigned judge at the April 5 hearing.

6 **2. MOTION TO WITHDRAW AS COUNSEL.**

7 An attorney may not withdraw as counsel except by leave of court. Permission to  
8 withdraw is discretionary. *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009). In  
9 ruling on a motion to withdraw, courts have considered (1) the reasons why withdrawal is  
10 sought, (2) the prejudice withdrawal may cause to other litigants, (3) the harm withdrawal might  
11 cause to the administration of justice, and (4) the degree to which withdrawal will delay the  
12 resolution of the case. *Das v. WMC Mortg. Corp.*, No. 10-cv-00650, 2011 WL 13239055, at \*1  
13 (N.D. Cal. Oct. 14, 2011) (Judge Lucy Koh).

14 Attorneys seeking to withdraw must also "comply with the standards of professional  
15 conduct required of members of the State Bar of California." Civil L.R. 11-4(a)(1). The  
16 California Rules of Professional Conduct set forth various circumstances under which  
17 withdrawal may be appropriate. For example, counsel may seek to withdraw if the client  
18 "renders it unreasonably difficult for the member to carry out the employment effectively." Cal.  
19 R. Prof. Conduct 3-700(C)(1). Alternatively, under Rule 3-700(C)(6), counsel may request to  
20 withdraw if counsel "believes in good faith, in a proceeding pending before a tribunal, that the  
21 tribunal will find the existence of other good cause for withdrawal."

22 As grounds for withdrawal, Attorney DiRocco explained that irreconcilable differences  
23 of opinion have arisen as to "certain significant issues and disputes" related to this action. At  
24 the hearing on the motion to withdraw, the undersigned judge held an *in camera* conference  
25 with plaintiff and Attorney DiRocco in which Attorney DiRocco elaborated on the reasons for  
26 his request to withdraw as counsel. In light of the information conveyed during the *in camera*  
27 hearing, this order finds that irreconcilable differences exist between plaintiff and counsel such  
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1 that there is good cause justifying Attorney DiRocco and the Lalezary Law Firm's withdrawal  
2 from this case. The motion to withdraw as plaintiff's counsel is accordingly **GRANTED**.<sup>2</sup>

3 **CONCLUSION**

4 For the foregoing reasons, the motion to withdraw as counsel is **GRANTED**. Plaintiff  
5 shall proceed with this case *pro se* in accordance with the case management order issued in this  
6 action.

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8 **IT IS SO ORDERED.**

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10 Dated: April 6, 2018.

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13 WILLIAM ALSUP  
14 UNITED STATES DISTRICT JUDGE  
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27 <sup>2</sup> After the *in camera* conference concluded and the undersigned judge indicated the motion to  
28 withdraw would be granted, Attorney DiRocco agreed to convene with plaintiff and defense counsel in an  
attempt to fully resolve this action. The hearing was adjourned for approximately thirty minutes to see whether  
the parties could reach a resolution. When the hearing resumed, however, plaintiff indicated her desire to  
proceed with the case and not settle her claims.